

FILED
CLERK'S OFFICE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2004 SEP 14 P 12:24
CIVIL ACTION NO.: 04-40168-FDS

CAPITAL RECORDS, INC., a Delaware Corporation; WARNER BROS. RECORDS, INC., a Delaware Corporation; ARISTA RECORDS, INC., a Delaware Corporation; BMG MUSIC, a New York general partnership; SONY MUSIC ENTERTAINMENT INC., a Delaware Corporation; and UMG RECORDINGS, INC., a Delaware Corporation,

Plaintiffs,

v.

JIM FITZPATRICK
Defendant

ANSWER AND JURY CLAIM OF THE DEFENDANT

Now comes Jim Fitzpatrick, defendant in the above-entitled matter (hereinafter "defendant"), and responds to the number paragraphs of plaintiff's Complaint (hereinafter the "Complaint"), as follows:

JURISDICTION AND VENUE

1. The defendant states he can neither admit or deny the plaintiff's statements in paragraph #1, because such statements constitute legal conclusions.

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2. The defendant states he can neither admit or deny the plaintiff's statements in paragraph #2, because such statements constitute legal conclusions.
3. The defendant denies the allegations contained in paragraph #3 of the Complaint and calls upon the plaintiff to prove the same.

PARTIES

4. The defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph #4 of the Complaint.
5. The defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph #5 of the Complaint.
6. The defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph #6 of the Complaint.
7. The defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph #7 of the Complaint.
8. The defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph #8 of the Complaint.

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9. The defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph #9 of the Complaint.

10. The defendant admits the allegations contained in paragraph #10 of the Complaint.

COUNT I

INFRINGEMENT OF COPYRIGHTS

11. The defendant repeats and reasserts his answers to paragraphs 1 through 10 and incorporate the same herein, by reference.

12. The defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph #12 of the Complaint, because such statements constitute legal conclusions and are generally unsupported.

13. The defendant states he can neither admit or deny the plaintiff's statements contained in paragraph #13, because such statements constitute legal conclusions.

14. The defendant denies the allegations contained in paragraph #14 of the Complaint and calls upon the plaintiff to prove the same.

15. The defendant denies the allegations contained in paragraph #15 of the Complaint and calls upon the plaintiff to prove the same.

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16. The defendant states he can neither admit or deny the plaintiff's statements contained in paragraph #16, because such statements constitute legal conclusions.

17. The defendant denies the allegations contained in paragraph #17 of the Complaint and calls upon the plaintiff to prove the same. The defendant further states he can neither admit or deny the plaintiff's statements contained in paragraph #17, because such statements constitute legal conclusions as to remedies and relief.

WHEREFORE, the defendant demands judgement of dismissal in its favor against plaintiff's Complaint, together with costs, attorney's fees and such other and further relief as this Honorable Court deems meet and just.

JURY CLAIM

THE DEFENDANT DEMANDS A TRIAL BY JURY ON ALL ISSUES.

AFFIRMATIVE DEFENSES

1. The plaintiff has not suffered any damage.

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2. The plaintiff did not suffer any damage as a result of the actions of the defendant.
3. To the extent that the plaintiff has suffer any damage, said damage was caused by or as a result of a third party and not the defendant
4. The defendants hereby give notice that he intends to rely upon such other and further defenses as may become available or apparent during discovery proceedings in this action, and hereby reserves the right to amend their answer and to assert any such defense by appropriate motion.
5. The defendant says that plaintiff's Complaint is subject to dismissal because of insufficiency of service of process, pursuant to Fed. R. Civ. P. 12(b)(5) and/or insufficiency of process pursuant to Fed. R. Civ. P. 12(b)(4).
6. The defendant says that plaintiff's Complaint is subject to dismissal because of failure to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(6).

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7. The defendant says that plaintiff's Complaint is subject to dismissal because of failure to join a party under Rule 19, pursuant to Fed. R. Civ. P. 12(b)(7).

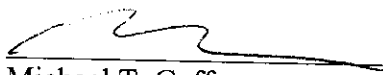
WHEREFORE, the defendant demands that:

1. The plaintiff's complaint and each and every cause of action contained therein be dismissed.
2. The defendant be awarded cost incurred in this action; and
3. This Honorable Court award such other relief as it deems equitable and just.

DEMAND FOR A JURY TRIAL ON ALL ISSUES SO TRIABLE TO A JURY.

Respectfully submitted,

DATED: 9/11/04


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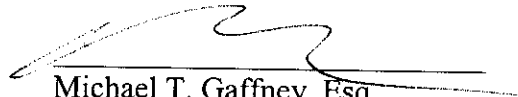
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CERTIFICATE OF SERVICE

I, Michael T. Gaffney, Esq., do hereby certify that a true copy of the above document, namely the defendant's Answer, was served via first-class mail, to Attorneys Colin J. Zick, Gabriel M. Helmer, Foley Hoag, LLP, 155 Seaport Boulevard, Boston, MA 02210-2600.

Dated: September 11, 2004


Michael T. Gaffney, Esq.

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